

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**ELITE FUEL SIX, INC.,
ELITE FUEL TWO, INC., AND
ISH OBEROI, INDIVIDUALLY**

**ADMINISTRATIVE ORDER
NO. 2010-UT- 13**

**UST NO. 199417679, 9 Elk Run Road,
Waterloo, IA**

**To: Ish Oberoi
9 Elk Run Rd.
Waterloo, IA 50703**

**Elite Fuel Six, Inc.
Elite Fuel Two, Inc.
Reg. Agent, Ish Oberoi.
9 Elk Run Rd
Waterloo, IA 50703**

I. SUMMARY

This administrative order (order) requires you to pay an administrative penalty of \$6,375 within 60 days of receipt of this order unless the order is appealed as provided in Division VII below. The penalty is assessed for operating underground storage tanks (UST) at the referenced facilities without an approved form of financial responsibility in violation of Iowa law and other UST operational and maintenance violations.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Paul Nelson, Environmental Specialist
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8779

Relating to legal issues:
Tamara Mullen , Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817

II. JURISDICTION

This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Iowa Department of Natural Resources (Department) to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapters 567 Iowa Administrative Code (IAC) 135 and 136. Iowa

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Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. Z & S, Inc. transferred ownership of property located at 9 Elk Run Road, Waterloo, Iowa to Waterloo Real Estate, Inc. by deed recorded on December 29, 2007. Waterloo Real Estate, Inc. transferred ownership of the property to Elite Fuel Six, Inc. (Elite Fuel 6) by deed recorded on December 28, 2007.
2. Waterloo Real Estate, Inc. is an Illinois company. The president of the company is Paul Ghuman. Elite Fuel 6 is an Illinois corporation registered with the Iowa Secretary of State and doing business in Iowa. Ish Oberoi is president of Elite Fuel 6 and upon information and belief is a principal stockholder in Elite Fuel 6. Ish Oberoi is also the president and upon information and belief a principal stockholder in Elite Fuel One, Inc., Elite Fuel Two, Inc., Elite Fuel Three, Inc., Elite Fuel Four, Inc., Elite Fuel Five, Inc., Elite Fuel Seven, Inc. and Elite Fuel Eight, Inc. all of which are Illinois companies registered with the Iowa Secretary of State (except Elite Fuel Eight, Inc) and doing business in Iowa. Upon information and belief, all of these corporations have owned or operated UST facilities.
3. There are three petroleum USTS located at the 9 Elk Run Road, Waterloo, Iowa facility.
4. Iowa Gas Group, Inc. (Iowa Gas) registered with the Department as the owner of petroleum USTS at 9 Elk Run Road, Waterloo, Iowa on Department form 148 dated January 28, 2008. Paul Ghuman identified himself as the authorized representative of Iowa Gas. Paul Ghuman is president of Iowa Gas and Waterloo Real Estate, Inc. and upon information and belief a principal stockholder.
5. On June 25, 2009, Ish Oberoi faxed a Department registration form dated June 26, 2009 identifying himself as the owner of the USTS at this location. The fax also included a 2009 annual tank management fee invoice identifying Ish Oberoi as the property owner, the UST owner and "Elite Fuel Two" as the UST operator. The public record identified Elite Fuel 6 as the property owner at this time.
6. At all times relevant to this order, Ish Oberoi has been a person in control of, or having responsibility for, the daily operation of the USTS at this location. He has been the primary contact person responsible for maintaining compliance with the regulatory requirements as stated in this order.
7. PMMIC, an Iowa UST insurance company, issued a certificate of insurance covering the USTS at this locaton and identified "Waterloo Real Estate, Inc." as the named insured with effective coverage dates of August 20, 2007 to August 19, 2008 and with a "retroactive date" of August 20, 2002. The policy expired on August 19, 2008 and was not renewed. A second certificate of insurance with the same policy number was issued naming "Elite Fuel Two" as the named insured with effective coverage dates of October 22, 2008 to October 21, 2009. PMMIC issued a notice

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cancelling the "Elite Fuel Two" UST policy effective June 22, 2009. There was a lapse in coverage between August 19, 2008 and October 22, 2008.

8. Colony Insurance, Inc. issued a certificate of insurance on the USTS at this location naming "Elite Fuel Six" as the named insured with an effective coverage period of July 6, 2009 to July 6, 2010. There was a lapse of coverage between the PMMIC cancellation date of June 22, 2009 and the Colony, Inc. start date of July 6, 2009.

9. On October 8, 2008, the Department field office conducted an inspection of this facility. The inspector observed that the USTS were in operation despite the PMMIC insurance cancellation effective August 18, 2008. The inspector issued a notice of violation (NOV) dated October 9, 2008. The violations noted in the inspection were (1) failure to have annual tank tags attached to fillpipes and the diesel tank did not have a permanent registration tag; (2) acceptance of fuel to untagged tanks; (3) the automatic tank gauging (ATG) system was in "Alarm" mode and had been operating without paper for an extended period of time; (4) ATG test results were only available for May and October 2008; (5) there were no records of the last 2 three-year corrosion protection tests available onsite; and (6) spill buckets were destroyed and there was water in the submersible turbine pump containment and fuel present in the fill port spill bucket. The NOV required the owner and operator to cease operation of USTS until proof of financial responsibility was provided and take further corrective actions to remedy the violations and submit records.

10. In response to the NOV, the facility retained Seneca Environmental Services, Inc. (Seneca) to inspect and repair their UST systems. Seneca reported that on or about October 20, 2008 they cleaned liquid and debris from all sumps, spill buckets and dispenser sumps. They also determined that the ATG system was not functioning correctly and not programmed to perform acceptable leak detection. Seneca re-programmed the ATG system to function properly. A corrosion protection test was also performed. The system passed except for a failed test at the line flex connectors. The report recommended installation of anodes on the flex connectors.

11. On November 26, 2008, the Department sent a letter to a fuel delivery company, Randolph's, Inc., authorizing delivery of fuel to the 12,000 gallon diesel and the 7,000 gallon gas USTS stating that replacement tags would be issued. No delivery was authorized to the 5,000 gallon unleaded UST because the spill containment had not been repaired.

12. By letter dated February 12, 2009, the Department authorized fuel delivery to the 5,000 gallon unleaded UST since the spill bucket had been replaced as required by the October 2008 inspection.

13. PMMIC's Department certified compliance inspector conducted an inspection of this UST facility on April 29, 2009. The inspector noted several regulatory violations that required corrective action including (1) leaking meters in dispensers; (2) liquid in spill basins; (3) no current tank tags on fillpipes; (4) liquid in dispenser sumps; (5) liquid in piping sumps; and (6) the ATG system

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monitoring the piping secondary containment was reported in an active alarm status. As required by Department regulations, the compliance inspector sent the insured the results of the inspection and a form dated May 7, 2009 which required the UST owner and operator to correct the violations within 60 days (July 6, 2009). The final inspection report indicates that the owner and operator failed to take corrective action. PMMIC then cancelled their insurance policy effective June 22, 2009 in part for failure to make repairs to the UST corrosion protection system by installing anodes on the flex connectors. This violation was first reported as part of a corrosion protection test ordered by the Department as the result of an inspection in October of 2008. The Department has no information to indicate the USTS were taken out of service between June 22, 2009 and July 6, 2009 during which there was no financial responsibility in effect. The PMMIC compliance inspection did not include an inspection and review of all Department records including last 12 months of leak detection records.

14. The owner and operator of this facility failed to pay annual tank management fees by the April 1, 2009 deadline. By letter dated June 25, 2009, the Department prohibited the acceptance of fuel into these USTS until delinquent tank fees were paid for the 2009-2010 period and tank tags issued. The owner and operator had been receiving fuel since April 2009 without current tank tags.

15. On July 2, 2009, the Department authorized a one time deposit of fuel and then two subsequent deposits until tank fees were paid on July 6, 2009 and the tank tags issued.

16. The owner and operator again failed to pay annual tank management fees and obtain 2010 tank tags by the January 15, 2010 regulatory due date or the tank tag expiration date of April 1, 2010. The Department again made a concession and allowed a one time delivery of fuel by letter dated April 12, 2010 until fees could be processed and tags issued.

IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTS constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules in chapters 567 IAC 135 and 136. The Director of the Department may order any responsible UST owner or operator to take all corrective action consistent with Commission rules. See Iowa Code section 455B.474(1)(f)(11).

2. Iowa Code section 455B.471(6) defines "owner" of USTS. Elite Fuel 6 was an owner as defined at all times relevant to the violations cited in this order and therefore responsible for compliance with the terms of this order.

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3. Iowa Code section 455B.471(5) defines an "operator" of USTS as " . . . a person in control of, or having responsibility for, the daily operation of the underground storage tank." Elite Fuel Two, Inc. (Elite Fuel 2) operated the USTS systems under a business agreement with the property owner, Elite Fuel 6. Ish Oberoi in his capacity as president of Elite Fuel 6 and Elite Fuel 2 was the primary person having control of the daily operation and regulatory compliance of the UST system. Elite Fuel 6, Elite Fuel 2 and Ish Oberoi are operators as defined and responsible for compliance with applicable terms of this order.

4. Owners and operators of USTS must maintain an approved financial assurance mechanism continuously until the tanks are permanently closed. 567 IAC 136.22. If insurance is the chosen method, owners and operators must provide proof of coverage through a certificate of insurance or endorsement worded exactly as provided in Department rule. 567 IAC 136.8

5. All owners and operators are required to maintain records documenting proof of an approved form of financial responsibility. 567 IAC 136.20. They must submit proof of financial responsibility to the Department upon request. 567 IAC 136.19.

6. Elite Fuel 6, Elite Fuel 2 and Ish Oberoi are jointly and severally responsible for operating USTS at this location after the PMMIC insurance cancellation date of August 19, 2008. These parties failed to maintain continuous financial responsibility until a PMMIC policy was issued with effective coverage dates of October 22, 2008 to October 21, 2009. These parties operated the USTS again after the PMMIC cancellation date of June 22, 2009 until a new policy with Colony Insurance, Inc. was established with effective coverage dates of July 6, 2009 to July 6, 2010.

7. The PMMIC policy was cancelled mid-term effective June 22, 2009 due to failure of the insured to correct regulatory violations noted in the certified compliance inspection conducted on April 29, 2009.

OTHER UST VIOLATIONS

8. The Department's UST inspection in October 2008 identified several violations as noted in Division III, paragraphs 9 and 10.

a. Department rules require owners and operators to affix permanent tank tags and annual tank tags to the fillpipes of the UST and prohibit the acceptance or delivery of fuel into tanks without current tags. The named parties failed to have tank tags on the tanks at the time of the October inspection and again in June of 2009. 567 IAC 135.3(5)

b. Department rules require all fillpipe manholes to have spill containment and that the containment sump be maintained. The named parties operated USTS with a severely damaged spill containment structure as stated in Division III, paragraph 9, 10 and 13. 567 IAC 135.3(1)(c)

c. Department rules require owners and operators to maintain 12 months of leak detection records and conduct monthly leak detection monitoring. The Department's October inspection found that the ATG system was in "Alarm" and had not been functioning for some time due to lack of paper. 567 IAC 135.5. The owners and operators have not maintained and produced 12 months of leak detection records and the Department inspection in October 2008, followed by the Sencea

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repairs in October 2008 show the ATG was not functioning properly. The owners and operators failed to conduct adequate monthly leak detection and provide records.

d. Department records require that the last two 3-year corrosion protection tests be available for inspection. 567 IAC 135.4(2)(d). Corrosion protection systems must be maintained, promptly repaired and meet performance standards. 567 IAC 135.3, 135.4(2), 135.4(4). Corrosion protection systems that have been repaired must be retested within 6 months. 567 IAC 135.4(4)(e). The named parties did not produce the last two 3-year corrosion protection tests and it is presumed the tests were not completed. The corrosion protection test that was completed in October 2008 passed as to most of the UST system except the unprotected flex connector. The owner and operator failed to make repairs as further evidenced by the PMMIC compliance inspection in April 2009.

V. ORDER

THEREFORE, you are ordered to comply with the following provisions in order to redress violations:

1. Elite Fuel 6, Elite Fuel 2 and Ish Oberoi are jointly and severally responsible to pay an administrative penalty of \$6,375 to the order of the Iowa Department of Natural Resources within sixty (60) days of receipt of this order unless the order is appealed as provided in Division VII below.
2. Within five (5) days of receipt of this order Elite Fuel 6 and Ish Oberoi are required to send the following records to the attention of Attorney Tamara Mullen ; (1) the last 12 months of monthly leak detection records; (2) the most recent annual line tightness test; (3) the most recent annual line leak detector test; and (4) repairs showing the flex connector has been cathodically protected and re-tested within 6 months of the repair.
3. No later than July 9, 2010, Elite Fuel 6 and Ish Oberoi are required to submit a certificate of insurance or other proof of an approved financial responsibility mechanism showing coverage beyond July 6, 2010.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for violation of the type cited in this order.
2. Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000 for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to chapter 455B. 567 IAC chapter 10 was adopted by the Commission to implement this provision. Pursuant to rule 567 IAC 10.2, the Department has determined that a penalty should be assessed. The administrative penalty is determined as follows. The Department reserves the right to reassess the penalty rationale if on appeal, additional information warrants a modification.

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ECONOMIC BENEFIT: The named parties have avoided the cost of paying the insurance premium necessary to maintain continuous coverage after the PMMIC cancellation date of August 19, 2008 until reinstatement effective October 22, 2008. There was a second lapse of coverage between the PMMIC cancellation date of June 22, 2009 and reinstatement of a policy with Colony Insurance, Inc. effective July 6, 2009. There was approximately 3 months of lapsed coverage. The estimated cost of an annual premium is \$500 per tank per year. The estimated avoided cost in premium is \$375 (\$125 per month). For this factor, \$375 is assessed.

GRAVITY: Maintaining continuous coverage on UST systems is one of the most important regulatory requirements. Maintaining insurance coverage even after USTS are taken out of operation is essential. The named parties continued to operate for some weeks after expiration of the PMMIC policy and allowed a policy to expire such that no coverage was maintained on non-operational tanks until subsequent policies were established. The other UST violations of failure to affix tank tags, acceptance of fuel to untagged tanks, failure to maintain records and conduct monthly leak detection, failure to conduct 3-year corrosion protection tests, failure to repair the flex connector which failed a corrosion test and failure to maintain spill containment together fully justify a gravity assessment to the maximum of \$3,000. For this factor, \$3,000 is assessed.

CULPABILITY: The named parties own and operate numerous UST facilities in Iowa and other states and should be aware of the financial responsibility requirements. They continued to accept fuel and operate the USTS knowing the PMMIC insurance had been cancelled, allowed it to expire mid-term and attempted to obtain further deliveries of fuel despite written directives that to do so was illegal. The wide range of UST operational violations and repeated violations such as failure to pay annual tank fees shows a pattern of non-compliance and gross negligence. Department rules allow a maximum assessment of up to \$3,000. For this factor, \$3,000 is assessed.

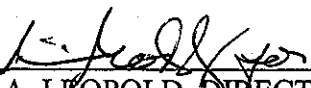
VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476, and chapter 567 IAC 7 which adopts by reference chapter 561 IAC 7, the named parties may file a written notice of appeal to the Commission within 30 days of receipt of this Order. The party should file this notice of appeal with the Director of the Department, and must identify the specific portion or portions of this order subject to appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477. The Department reserves the right to request that the Attorney General initiate legal action based on the violation alleged in this order, as well as any subsequent violations in the event the party violates the order, including failure to timely pay any penalty.

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RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of

June, 2010

Copies to: Named parties, D. Wornson, E. Douskey, FO 1, V (I)